

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

KENNETH R. REID, et al.,

Plaintiffs,

v.

WARDEN J. EBBERT, et al.,

Defendants.

CIVIL ACTION NO. 1:16-cv-01403

(RAMBO, J.)

(SAPORITO, M.)

FILED

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Dec 15 2016

REPORT AND RECOMMENDATION

Per

MS

This is a *Bivens* action brought jointly by several *pro se* plaintiffs who are or were incarcerated at USP Lewisburg, located in Union County, Pennsylvania.

We recently denied a motion by one of the plaintiffs, Eric Houston,¹ for leave to proceed *in forma pauperis* in this action. (See Doc. 27; Doc. 28). Houston is subject to the “three strikes rule” set forth in 28 U.S.C. § 1915(g) because he has previously brought three or more federal actions or appeals that were dismissed as frivolous, as malicious, or for failure to

¹ Houston is currently incarcerated as Inmate No. 204320 at Bledsoe County Correctional Complex, located in Pikeville, Tennessee. Previously, including at the time of filing of this civil action, Houston was a federal prisoner incarcerated under BOP Register No. 16891-074 at USP Lewisburg, located in Union County, Pennsylvania.

state a claim. In his motion, Houston sought leave to proceed *in forma pauperis* under a narrow exception to the “three strikes rule” that applies when a prisoner is “under imminent danger of serious physical injury.” *See generally* 28 U.S.C. § 1915(g).

In denying the motion, we found that Houston had failed to allege sufficient specific and credible facts to establish that he was “under imminent danger of serious physical injury” at the time the complaint was filed. *See generally Abdul-Akbar v. McKelvie*, 239 F.3d 307, 312 (3d Cir. 2001) (en banc). We ordered Houston to pay the applicable filing fee in full within thirty days of our order denying leave to proceed *in forma pauperis*. (Doc. 28). Houston has failed to do so.

Accordingly, it is recommended that all of plaintiff Houston’s claims be **DISMISSED WITHOUT PREJUDICE** for failure to pay the requisite filing and administrative fees, and that Houston be **TERMINATED** as a party to this action.

Dated: December 15, 2016


JOSEPH F. SAVORITO, JR.
United States Magistrate Judge

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NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated December 15, 2016. Any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may

accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Dated: December 15, 2016

Joseph F. Saporito Jr.
JOSEPH F. Saporito, JR.
United States Magistrate Judge